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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,717	10/17/2003	Nitin Jhingan	END920030062US1 (16847)	3277
23389 7590 12/04/2008 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER NGUYEN, QUYNH H				
ART UNIT 2614		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/687,717

**Applicant(s)**

JHINGAN, NITIN

**Examiner**

QUYNH H. NGUYEN

**Art Unit**

2614

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE and amendment filed 10/9/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-10 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's RCE and amendment filed 10/9/08 has been entered. Claims 1, 7, and 13 have been amended. No claims 5 and 11 have been canceled. No claims have been added. Claims 1-4, 6-10, and 12-17 are still pending in this application, with claims 1, 7, and 13 being independent.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Objections***

3. Claim 7 is objected to because of the following informalities: Claim 7 recites "said accessed instance of the application" should be -- said accessed instance of application comprising: --. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 recites the limitation "the different databases is best suited for the user..." in line 11. There is insufficient antecedent basis for this limitation in the claim.

Suggestion is to add limitation ", and the plurality of instances having different databases;" at the end of the first limitation claim 7.

Claim 1 recites "... instance of the application operating for selecting one of the plurality of instances..." and "said accessed one instance sending...". It is unclear as how an instance could select another instance or send to user? Applicant's specification and claims are written too broad and does not explain how an instance could select another instance or send to user. Examiner suggests to explain at least once in the first limitation of each independent claims to positive recite functions of an instance as follows: plurality of instances of the application operating on servers to perform functions of selecting one of the instances for a session with a user, and sending to the user an identifier for establishing the session with the user". Claims 7 and 13 have the same defect.

Claims 13-17 claim a program storage device. However, Applicant's Specification does not positively disclose what a program storage device is?

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the relationship between instances of the application and other claimed elements (Internet session, Internet address, databases, servers) is unclear. Claims 7 and 13 have the same defects.

5. Claims 1-4 and 6 are method claims. In order for a method to be considered a "process" under 101, a claimed process must either (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1876)). If neither of these requirements is met by the claims, the method is not a patent eligible process under 101 and is non-statutory subject matter. Thus, to qualify as a statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example, by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example, by identifying the material that is being changed to a different state.

Claims 13-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Claims 13-17, claim "A program storage device readable by machine". However, Applicant's Specification does not disclose what a program storage device is. For example, device may be paper, punch card, or printed matter; and machine could be bar code reader, etc. Since the specification does not positive disclose, if paper or punch card readable by bar code reader then the claimed invention

is directed to non-statutory subject matter. "Machine" is a very broad term, suggestion is to change machine to computer.

***Claim Rejections - 35 USC § 103***

6. Claims 1-4, 7-10, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over submitted prior art Logan et al. (US Patent 6,578,066) in view of Brown (2003/0145106).

As to claims 1, 7, and 13, Logan et al. teaches the steps of:

providing a plurality of instances of the application on a plurality of servers, each of the instances operated on one of the servers having a respective Internet address (col. 3, lines 8-11 and lines 39-45);

the user accessing one of the instances, via the Internet, by means of the Internet address of the one instance (col. 3, lines 45-48);

selecting one of the instances, according to a predefined procedure, for a session with the user (col. 5, lines 6-14);

sending to the user an identifier for establishing a session with the selected application (col. 3, lines 22-25);

the user establishing a session with the selected one instance, via the Internet, by using the identifier (col. 3, lines 45-48).

For limitations said one instance selecting and said accessed one instance sending, see 112 rejection above. Logan does not explicitly teach plurality of instances having different databases that is best suited for the user. However, since Logan

discussed server performs load balancing to improve performance, connectivity, resiliency and economy (col. 1, lines 42-46), hence it would have been obvious that servers have different databases, even these databases may be identical but each site has its own separate storage, and please notice claim 13 does not have this limitation. Logan further on explicitly teach selecting one of the instances including the step of selecting one of the instances based on a profile of the user and based on a profile of the user and based on given security rules.

Brown teaches teach selecting one of the instances including the step of selecting one of the instances based on a profile of the user and based on a profile of the user and based on given security rules ([0010], [0022] - [0024] - *where Brown discussed selecting proper packet redirection based on mobile device profile and specific rules and information evaluated and retrieved from the packet inspection routine; and the system for directing data traffic includes firewall and secured network*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made the teachings of Brown into the teachings of Logan in order to have a more efficient system. Selecting proper packet redirection based on user profile and security rules are well known and the advantage of using them is also well known. For example, improving data traffic, load balancing, and network security in the network.

As to claims 2, 8, and 14, Logan et al. teaches selecting one of the instances based on the geographic location of the user (Fig. 3, 302, 304, 306; col. 3, lines 8-16; col. 11, lines 57-61).

As to claims 3, 9, and 15, Logan et al. teaches each of the instances has a Uniform Resource Locator, and sending to the user the URL of the selected instance (col. 3, lines 8-25).

As to claims 4, 10, and 16, Logan et al. teaches obtaining from the first table the geographic region associated with the user; and obtaining from the second table, the instance associated with the obtained geographic region (col. 9, line 37 through col. 10, line 65).

7. Claims 6, 12, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan and Brown and further in view of Low (US Patent 6,282,281).

As to claims 6, 12, and 17, Logan and Brown do not teach user profile is configurable.

Low teaches user profile is configurable (col. 4, lines 25-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Low into the teachings of Logan and Brown in order to have a more efficient system and allowing users to configure their profile according to their preferences.

### ***Response to Arguments***

8. Applicant's arguments filed 10/9/08 have been fully considered but they are not persuasive. Applicant's arguments are addressed in the above claimed rejections.



With respect to claims 13-17, program only recited in the claims and not being described in the specification. Therefore, the 112 rejection is maintained. Please refer to the above 101 and 112 rejections.

Applicant mainly argues that prior arts do not disclose "selecting the instance for the session with the user based on which database, of the different databases of the instances, is best suited for the user". Examiner respectfully submits that the above limitation is merely recited in claim 1 and not in claims 7 and 13. See above 112 rejections.

Applicant argues that Logan teaches each of the distributed sites have identical storage. Examiner would interpret the above passage as each site has its own storage and even these storages may be identical but each site has its own separate storage.

Applicant argues that Brown is directed to "routing individual data items to computer network elements. This is very different from establishing a session between a user and a server, where communications are sent back and forth between the user and the server". Examiner respectfully submits that these are not recited in the claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUYNH H. NGUYEN whose telephone number is 571-272-7489. The examiner can normally be reached on Monday - Thursday from 6:30 A.M. to 5:00 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Quynh H Nguyen/

Primary Examiner, Art Unit 2614